any "ear marks" by which the original owner can identify it as his own or as having at one time been in his possession, how can he make proof of title as against a person in actual possession of the log? If, in the case under discussion, the riparian proprietor, or any other person, had recovered these unmarked logs, what proof of ownership could defendant company or the log owners for whom it was operating have made in an action of replevin brought to regain their possession? Would a showing that the parties for whom defendant company was operating were the owners of a large number of all of the marks that had ever been used upon Muskegon River have been sufficient to show right to possession and to a maintenance of the action? Would it not have been necessary to show that the parties maintaining the action owned or represented the owners of all of the marks that had ever been used on Muskegon River or represented all persons who had ever placed logs in the river for purposes of transportation? While a showing, such as was made in this case, as to the ownership of marks by parties for whom defendant company was operating, might have been sufficient to indicate probable ownership of a large majority of the unmarked logs which were recovered, under that showing, there could, of necessity, have been no such definite ascertainment as to the ownership or right to possession of any particular unmarked log as would constitute a sufficient basis for a recovery in an action of replevin.

In holding that the unmarked logs in the bottom of the river could be considered neither lost nor abandoned by the original owners, the court does not seem to have considered the difficulties of applying that rule when it came to proving ownership to any particular unmarked log by a log owner who may have owned it at some time in the past. It being impossible to identify an unmarked log or to ascertain to whom it originally belonged, the conclusion seems irresistible that such a log in the bottom of Muskegon River, while it may not have been intentionally abandoned by its original owner, must be considered as lost and beyond his control, because of his inability to show his prior possession or title, and that, while a riparian proprietor might have no interest in such a log by virtue of his riparian ownership, the title of a finder and actual possessor would be paramount and unassailable.

COMBINATION AMONG PHYSICIANS TO FIX PRICES FOR PROFESSIONAL SERVICES.—The case of *Rohlf* v. *Kasemeier et al.*, decided by the Supreme Court of Iowa, November 18, 1908, and reported in 118 N. W. Rep., p. 276, although primarily upon the construction of a local statute, involves a question of general interest. The plaintiff therein, who is a physician, together with thirteen others of the same profession, all residing and practicing in the same county, entered into an agreement, combination or understanding, the terms of which are not given, but the object of which was to fix and maintain the fees and charges to be exacted for medical and surgical services in said county. The code of the state provided that "any corporation organized under the laws of this or any other state or country for transacting or con-

ducting any kind of business in this state, or any partnership, association or individual, creating, entering into or becoming a member of, or party to, any pool, trust, agreement, contract, combination, confederation or understanding with any other corporation, partnership, association, or individual to regulate or fix the price of any article of merchandise or commodity, or to fix or limit the amount or quantity of any article, commodity, or merchandise to be manufactured, mined, produced or sold in this state, shall be guilty of conspiracy." The plaintiff and the others who were parties with him in the said agreement, were indicted by a grand jury of the county for entering into a combination to fix and maintain fees contrary to the provisions of the statute hereinbefore quoted. The plaintiff, having been arrested under the indictment, brought habeas corpus proceedings to secure his release from custody, claiming undue and illegal restraint of his liberty, for the reason that no offense known to the laws of the state was charged in the indictment, and for the further reason that "if there be a law forbidding such acts as are charged against him, it is unconstitutional and void, in that it deprives him of his liberty, prevents him from acquiring or possessing property, and deprives him of his safety and the pursuit of his happiness * * * and of the right of contract and of the equal protection of the laws." The trial court discharged the plaintiff and released him from the custody of the sheriff by whom he was held.

It was contended by the appellants in the supreme court that the word "commodity," as used in the statute, is broad enough to cover the charges of a physician or surgeon for his professional services or skill,—indeed, that it is broad enough to cover all kinds of personal labor, both skilled and unskilled. There was perhaps some ground for this contention growing out of a previous holding of the court to the effect that the same word in another statute covered the business of insurance, and that a combination to fix insurance rates would be illegal. See *Beechley* v. *Mulville,* 102 Iowa 602, 70 N. W. Rep. 107, 71 N. W. Rep. 428, 63 Am. St. Rep. 479. But the court distinguished that case from the one under review by saying in effect that in the former the parties were not selling their own services but were selling *insurance,* which might well be regarded as a "commodity" as that term is used in the statute.

In answering the contention of the appellants, the reviewing court refers first to the rules of construction that should be applied in the case. As the statute is a criminal one, nothing can be added to it by intendment, and ordinarily such an act should have a strict construction. Further, in construing any statute, all the language should be considered, even though we are seeking the construction of but a single word, much of necessity depending upon the context. Moreover, language, in the construction of a statute, should, as a rule, be given its usual and ordinary meaning. Applying these rules, the court finds that the evident intent of the legislature was, not that this statute should cover agreements as to prices for personal labor or effort, whether skilled or unskilled, but rather that it should prevent combinations to regulate or fix the price of movable things, the product of labor and

industry, or to fix or limit the amount of such things that should be produced. "The statute in question," says the court, "was aimed at unlawful conspiracies or combinations in restraint of trade, and was manifestly not intended to cover labor unions." In regard to the proper interpretation to be put upon the word "commodity," as used in the statute, the court holds that, being a general term, it must, under a settled rule of interpretation, be limited and controlled by the special term "merchandise"; that so limited and controlled it includes movable things that are the products of labor and the subjects of sale, but does not include labor, either skilled or unskilled. To hold that labor is a commodity to be bought, sold or produced like merchandise, would, according to the opinion of the court, be a strained and unnatural construction which ought not to receive judicial sanction. The judgment of the reviewing court that the trial court was right in discharging the plaintiff certainly has the support of reason and authority. See cases cited.

It may be suggested that the reason for the attempt to bring the agreement of the doctors under this statute is not very apparent. It would seem that it might be for the interest of the public to have the fees of physicians settled and fixed by agreement among themselves, even at high figures, in view of the custom of many in the profession to gauge the charges for services by the ability of the patient to pay. H. B. H.

THE ISSUANCE OF RECEIVERS' CERTIFICATES TO PAY INTEREST, ETC.—Probably no head of equity jurisdiction has undergone more rapid development in recent years than that of receivers. In almost every case involving the receivership of an insolvent corporation there arises some question concerning the power of the court to authorize the issuance of receivers' certificates which shall, when issued, be made a lien upon the property of the corporation prior to subsisting liens. This power has always been exercised with a great deal of caution, generally being confined, except in the case of railroad corporations, to the purpose of raising money necessary for preserving the actual existence of property. But in a very recent case, the Court of Chancery of New Jersey has enunciated a doctrine which, if followed, will result in extending the power of the court in this regard to a point far beyond any that has yet been reached. In this case, The United Box Board & Paper Co., a private corporation, formed for the purpose of manufacturing paper boxes, was insolvent and in the hands of a receiver. Upon a mill known as the "Wabash mill," valued at $500,000, one of eighteen owned by the corporation, there was a first mortgage standing as security for the payment of bonds amounting to $188,000, and subject to foreclosure in case of default in payment of interest and a portion of the bonded indebtedness. The receiver applied to the court for authority to issue receivers' certificates to provide a fund for paying insurance premiums, interest on the bonds, and an installment of $13,000 on the mortgage debt; such certificates to be made a lien upon all the property of the corporation, prior to that of a subsisting mortgage, the latter mortgage being junior to the former as to the Wabash mill, but a first mortgage upon the other property. The court held that the receiver